a government as defendant. There is no inherent reason to refuse judicial cognizance of a *de facto* government as a legal unit. A usurping group may be dealt with as a legal entity in litigation without embarrassing the political departments of the government. Political questions will be involved, if at all, only in the determination of the powers and responsibilities of this legal unit. Where a government is recognized after an action is started, the defendant cannot assert that there was no party plaintiff at the beginning of the action. *State of Yucatan* v. *Argumedo, supra.* This indirectly assumes that there was a legal unit before recognition, the recognition merely removing political objections to the suit. Though the Soviet Government is a legal unit, the capacity to sue may be denied because of political considerations. But there should be no rule of thumb as suggested in the *Cibrario* case; rather such capacity should depend upon the political ramifications of the particular litigation. The principal case involved no political objections, which is the normal situation where the *de facto* government is the defendant. Obviously this defendant is not protected by the usual immunity of foreign states based upon comity. *Kingdom of Roumania* v. *Guaranty Trust Co.*, 250 Fed. 341 (2d Circ.).

INTERSTATE COMMERCE — CONTROL BY CONGRESS — RESPONSIBILITY FOR DISCRIMINATION UNDER § 3 OF THE INTERSTATE COMMERCE ACT. — Certain southern and midwestern carriers, with whom the plaintiffs had through routes and joint rates, allowed the privilege of creosoting-in-transit to creosoting companies on their lines. The plaintiff carriers refused to grant this privilege to the X Company, a competing creosoting company, and the only one on the plaintiffs' lines. On petition of the X Company, the Interstate Commerce Commission found that the denial of this privilege was not unjust or unreasonable under § 1 (6) but did subject the company to unjust discrimination under § 3 of the Interstate Commerce Act. (24 STAT. AT. L. 379, 380.) It ordered the plaintiffs to remove this undue discrimination. (*American Creosoting Co.* v. *Director General*, 61 I. C. C. 145.) The plaintiffs applied for a preliminary injunction to prevent the enforcement of this order. The application was denied. *Held*, that the decree be reversed. *Central R. R. of N. J.* v. *United States*, U. S. Sup. Ct., Oct. Term, 1921, No. 436.

Whether or not discrimination exists in a given case is a question of fact. *Interstate Commerce Commission* v. *Alabama Midland Ry.*, 168 U. S. 144. The findings of the Interstate Commerce Commission in this respect are conclusive, unless arbitrary. *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457. But in the principal case there is a question of law: whether the discrimination found was attributable to the plaintiffs. Such a question is decided *de novo* by the courts. *Texas & Pacific Ry.* v. *Interstate Commerce Commission*, 162 U. S. 197. It is an eminently proper construction of § 3 that it prohibits only discrimination by a carrier between shippers on its own lines, or by several carriers "if each carrier has participated in some way in that which causes the unjust discrimination." *Cf. Penn. Refining Co.* v. *Western N. Y. & Pa. R. R. Co.*, 208 U. S. 208; *Phila. & Reading Ry.* v. *United States*, 240 U. S. 334. The hardship to the X Company was caused by the distant carriers independently granting the privilege to its competitors. The advisability of such a practice may depend on local conditions. It would be unfortunate if a carrier could be compelled to grant a privilege merely because its connections do so. The X Company's only remedy is to convince the Commission that denial of the privilege is unreasonable under § 1 (6) of the Act.

INJUNCTIONS — NATURE AND SCOPE OF REMEDY — RELIEF AGAINST FRAUDULENT SUBSTITUTIONS OF THE DEFENDANT'S PRODUCT FOR THE PLAINTIFF'S. — The complainant prepared a medicine called Coco-Quinine, colored and flavored with chocolate. Its merits were explained to physicians who prescribed

it for patients. The complainant sold the medicine to druggists who retailed it to the patients. The defendant prepared a medicine, also flavored with chocolate, looking and tasting like Coco-Quinine, which it called Quin-Coco. The defendant induced druggists to substitute Quin-Coco in filling prescriptions for Coco-Quinine. *Held*, that the defendant be enjoined from using chocolate in the preparation of Quin-Coco. *Eli Lilly & Co.* v. *Wm. R. Warner & Co.*, 275 Fed. 752 (3rd circ.).

The court assumed that anyone, if not fraudulent, might use chocolate in such a preparation. It follows from the court's assumption that the plaintiff had no substantive right against the use of chocolate by the defendant. It is submitted that the defendant's fraud is not a sufficient basis for the creation of a new substantive right in the plaintiff. The plaintiff is entitled only to the enforcement of such rights as it already has. *Mayor etc. of Baltimore* v. *Sackett*, 135 Md. 56, 107 Atl. 557; *Pierce* v. *Stablemen's Union*, 156 Cal. 70, 103 Pac. 324; *Cronin* v. *Bloemecke*, 58 N. J. Eq. 313, 43 Atl. 605; *Chamberlain* v. *Douglas*, 24 App. Div. 582, 48 N. Y. Supp. 710; *Snyder* v. *Hopkins*, 31 Kan. 557, 3 Pac. 367. *Contra*, *Taylor Iron & Steel Co.* v. *Nichols*, 70 N. J. Eq. 541, 61 Atl. 946. See 19 HARV. L. REV. 537. The language of the opinion indicates that the court was influenced by the fact that the defendant was a "bad man." But it is unwise for equity to punish wrongdoing, since it does not afford the guaranties against arbitrariness given in a criminal prosecution. See *N. Y., N. H. & H. R. R. Co.* v. *Interstate Com. Com.*, 200 U. S. 361, 404. If, as the court held, the only element of unfair competition was the fraudulent substitution, only that substitution should have been enjoined. *Weber Medical Tea Co.* v. *Kirschstein*, 101 Fed. 580 (S. D. N. Y.). *Cf. Saxlehner* v. *Eisner & Mendelson Co.*, 88 Fed. 61, 70 (S. D. N. Y.). But it might well have been held that it was unfair competition for the defendant to imitate the complainant's medicine. If that is so, the defendant might be ordered to change the appearance and taste of its product. See NIMS, UNFAIR COMPETITION AND TRADE MARKS, 2 ed., § 135. And this might be done by prohibiting the use of a similar flavoring medium.

PARTNERSHIP — RIGHTS AND REMEDIES OF CREDITORS — RIGHT AGAINST DISSENTING PARTNER. — A and B were partners. It was customary for them to give promissory notes for advances made to the firm. The plaintiff, a third party, made advances to A for the partnership, after notice from B that he would not be bound by the transaction. B is sued on the notes. *Held*, that the plaintiff recover. *Canadian Bank of Commerce* v. *Patricia Syndicate*, 20 Ont. Weekly Notes, 529.

The weight of authority is *contra*. *Willis* v. *Dyson*, 1 Stark. 164; *Knox* v. *Buffington*, 50 Ia. 320; *St. Louis Brewing Ass'n* v. *Elmer*, 189 Mo. App. 197, 175 S. W. 102; *Bank of Bellbuckle* v. *Mason*, 139 Tenn. 659, 202 S. W. 931. But see *Campbell* v. *Bowen*, 49 Ga. 417; *Johnston* v. *Bernheim*, 86 N. C. 339. The courts argue from principles of agency. See PARSONS, PARTNERSHIP, 4 (Beale's) ed., § 84, note (*v*). But the law of partnership does not follow necessarily from the law of agency. Under the common-law theory of partnership, the better view is that each partner gives to a majority irrevocable power to act for him in carrying on the business in the usual way until dissolution. *Johnston* v. *Dutton's Adm'r*, 27 Ala. 245. See *Staples* v. *Sprague*, 75 Me. 458, 460; *Nolan* v. *Lovelock*, 1 Mont. 224, 227. See also STORY, PARTNERSHIP, 7 ed., § 123. *Contra*, *Galway* v. *Matthew*, 1 Camp. 403; S. C. 10 East, 264; *Matthews* v. *Dare*, 20 Md. 248, 273; *Feigley* v. *Sponeberger*, 5 W. & S. (Pa.) 564. And it may be argued that when there are only two partners each gives the other such authority. Under the mercantile view, if the firm has acted all members are bound regardless of dissent. The difficult question is whether one should require action by the firm to restrict the authority of a member or action by the